

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

RSA.No. 382 of 2007()

AS.55/2000 of SUB COURT, PAYYANNUR
OS.190/1996 of MUNSIFF COURT, THALIPARAMBA
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APPELLANT : APPELLANT/DEFENDANTS

1. CHEVIDAN KALLYANI, D/O.KUNHAKKAM,
NO OCCUPATION, AGED 67 YEARS, RESIDING AT
KALLIASSERY AMSOM DESOM, MANGAD, POST KALLIASSERY.
2. PACHA NARAYANAN, S/O.CHEVIDAN,
KALLIYANI, AGED 34 YEARS, COOLIE,
RESIDING AT KALLIASSERY AMSOM DESOM, MANGAD,
POST KALLIASSERY.

BY ADV. SRI.BLAZE K.JOSE

RESPONDENT/RESPONDENTS: PLAINTIFF

CHEVIDAN KRISHNAN, S/O.KUNHAKKAM,
COOLIE, AGED 64 YEARS, RESIDING AT PORKKALAM P.O.,
KOOOTHUPARAMBA.

BY ADV.SRI.B.PREMNATH

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 01/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER IN I.A.NO.841/07 IN RSA NO.382/2007

1.6.2007

Dismissed

Sd/- M.Sasidharan Nambiar

Judge

/true copy/

P.S to Judge

M.SASIDHARAN NAMBIAR, J.

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R.S.A. NO. 382 OF 2007

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Dated this the 1st day of June, 2007

JUDGMENT

Appellants are the defendants in O.S.190/1996 on the file of Munsiff Court, Taliparamba. Respondent is the plaintiff. Respondent instituted the suit seeking a decree for recovery of possession of the plaint schedule property which consist of a house bearing KP-X/493 from the possession of appellants on the strength of his title. According to respondent after plaint schedule property was obtained under Ext.A1 sale deed respondent renovated the same and later permitted first appellant being his sister who was not having no house to reside therein with second appellant her son and subsequently appellants showed hostility to respondent and therefore respondent asked them to surrender the property, but they did not so so and so respondent is entitled to a decree for recovery of possession of

the property on the strength of his title. Appellants resisted the suit contending that plaint schedule property was taken on rent by the father of the respondent and first appellant from Alinkeel Kannan and they have been residing therein and after the death of the father as all the sisters were married, first appellant continued to reside in the house and later Alinkeel Narayani to whom the property devolved agreed to sell the property to the first appellant and she paid Rs.2000/- towards the sale consideration and first appellant renovated the house spending Rs.32,518/- and therefore respondent is not entitled to a decree for recovery of possession. It was contended that as the building is situated within Kalliassery Panchayat where provisions of Kerala Buildings (Lease and Rent Control) Act is made applicable and so the suit is not maintainable.

2. Learned Munsiff framed the necessary issues. On the evidence of PW1, DW1 and Exts.A1 to A10, learned Munsiff found that respondent has title to

the plaint schedule property and appellants are not tenants entitled to the benefit of the Kerala Buildings (Lease and Rent Control) Act and therefore respondent is entitled to the decree for recovery of possession. A decree was granted. Appellants challenged the decree and judgment before the Sub Court, Payyannur in A.S.55/2000. Learned Sub Judge on reappreciation of evidence confirmed the finding of the learned Munsiff and dismissed the appeal. It is challenged in this second appeal.

3.Learned counsel appearing for appellants and learned counsel appearing for respondent who filed a caveat for the respondent were heard.

4. Learned counsel appearing for appellants argued that appellants are entitled to get the benefit of Kerala Buildings (Lease and Rent Control) Act and in such circumstance, the decree granted is unsustainable. Learned counsel appearing for the respondent pointed out that in execution of the decree, respondent has already

taken possession of the building and as found by both the courts, appellants are not entitled to the protection of Kerala Buildings (Lease and Rent Control) Act and no substantial question of law is involved in this appeal.

5. On hearing learned counsel appearing for appellants and respondent, I do not find any substantial question of law involved in the appeal. Admittedly plaint schedule property originally belonged to Alinkeel Kannan. Cheriaraman, father of respondent and appellant obtained the property from Alinkeel Kannan on lease under Ext.A3 lease deed. Later under Ext.A4, lessee Cheriaraman surrendered the leasehold right to Alinkeel Kannan on 21-12-1960. Under Ext.A5 lease deed respondent obtained the property on lease. Thereafter under Ext.A1 sale deed respondent purchased the jenm right from Alinkeel Narayani to whom the property was allotted under Ext.A2 partition deed in the family partition of the landlord. Though appellants set up an oral

agreement for sale by Narayani no evidence was adduced. In the light of the evidence courts below found that respondent has title to the property.

6. Though appellants contended that Kerala Act 2 of 1965 is applicable and therefore the decree granted by the courts below is not sustainable, there is no evidence to prove that appellants are building tenants as defined under the Kerala Act. In such circumstance, courts below concurrently found that respondent is entitled to the decree for recovery of possession on the strength of title. In such circumstance, no substantial question of law is involved in the appeal.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006